HOUSE BILL No. 1505

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-2-12.

Synopsis: Prudent management of institutional funds. Amends the Uniform Management of Institutional Funds Act to conform to the Uniform Prudent Management of Institutional Funds Act. Repeals nonconforming provisions.

Effective: July 1, 2007.

Foley

January 23, 2007, read first time and referred to Committee on Financial Institutions.

Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1505

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 30-2-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** This chapter applies to an institutional fund **in existence after June 30, 2007.**

(b) For an institutional fund in existence before July 1, 2007, this chapter applies only to decisions made or actions taken after June 30, 2007.

SECTION 2. IC 30-2-12-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. As used in this chapter, "charitable purpose" means the following:**

(1) Relief of poverty.

(2) Advancement of education.

(3) Advancement of religion.

(4) Promotion of health.

(5) Promotion of a governmental purpose.

(6) Any other purpose the achievement of which benefits the community.

SECTION 3. IC 30-2-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this chapter, "endowment fund" means an institutional fund, or any part of the fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. **The term does not include assets that an institution designates as an endowment fund for the institution's use.**

SECTION 4. IC 30-2-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter, "gift instrument" means a ~~will, a deed, a grant, a conveyance, an agreement, a memorandum, a writing, or other governing document~~ **record,** including ~~the terms of~~ any institutional solicitations, ~~from which an institutional fund resulted)~~ under which property is **granted or** transferred to or held by an institution as an institutional fund.

SECTION 5. IC 30-2-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. As used in this chapter, "institution" means any of the following:

~~(1) An approved institution of higher learning (as defined in IC 20-12-21-3) and its related foundations.~~

~~(2) An organization that:~~

~~(A) is an exempt organization under Section 501(c)(3) of the Internal Revenue Code;~~

~~(B) has an endowment fund with a fair market value of at least ten million dollars ($10,000,000); and~~

~~(C) is not a religious organization.~~

~~(3) A community foundation or trust.~~

(1) A person, other than an individual, that is organized and operated exclusively for charitable purposes.

(2) The state, including any agency or instrumentality of the state, or a unit of local government to the extent that the state or unit holds funds exclusively for charitable purposes.

(3) A trust that has only charitable interests, including a trust:

(A) that previously had both charitable and noncharitable interests; and

(B) the noncharitable interests of which were previously terminated.

SECTION 6. IC 30-2-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. ~~(a)~~ As used in this chapter, "institutional fund" means a fund held by an institution **exclusively** for ~~its exclusive use, benefit, or~~ **charitable** purposes. The term does not include the following:

(1) ~~Except as provided in subsection (b),~~ A fund held for an

institution by a trustee that is not an institution.

(2) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) Assets held by an institution primarily for charitable purposes and not primarily for investment purposes.

~~(b) The term includes a fund that is held exclusively for the benefit of a community foundation or trust regardless of the nature of the trustee or fiduciary.~~

SECTION 7. IC 30-2-12-6.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.4. As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, the state of Indiana, a state agency or instrumentality, a unit of local government, or any other legal or commercial entity.**

SECTION 8. IC 30-2-12-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.7. As used in this chapter, "record" means information that is:**

(1) inscribed on a tangible medium; or

(2) stored in an electronic or other medium; and

is retrievable in a perceivable form.

SECTION 9. IC 30-2-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. ~~Section 8 of this chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation may not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable~~ **(a) Subject to the terms of a gift instrument and subsection (e), an institution may appropriate or accumulate so much of an endowment fund that the institution determines is prudent for the uses, benefits, purposes, and duration of the endowment fund. Except as provided in a gift instrument, the assets in an endowment fund are donor restricted until appropriated by the institution.**

(b) In determining to appropriate or accumulate endowment funds, an institution shall:

(1) act in good faith and with the care a prudent person acting in a like position would use under similar circumstances; and

(2) consider the following factors:

(A) The duration and preservation of the endowment fund.
(B) The purposes of the institution and the endowment fund.
(C) General economic conditions.
(D) The possible effects of inflation or deflation.
(E) The expected total return from income and the appreciation of investments.
(F) Other resources of the institution.
(G) The investment policy of the institution.

(c) To be effective, a gift instrument must specifically state a limitation on the authority of an institution to appropriate or accumulate under subsection (a).

(d) A gift instrument **that designates a gift as an endowment or contains a direction or authorization** to use only income, interest, dividends, rents, issues, or profits, or to preserve the principal intact, or a similar direction:
(1) creates an endowment fund of permanent duration unless the gift instrument states otherwise; and
(2) does not otherwise limit the authority to appropriate or accumulate under subsection (a).

(e) The appropriation for expenditure in any year of an amount greater than seven percent (7%) of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over at least three (3) years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for less than three (3) years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:
(1) apply to an appropriation for expenditure permitted under:
(A) any law other than this chapter; or
(B) the gift instrument; or
(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent (7%) of the fair market value of the endowment fund.

SECTION 10. IC 30-2-12-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) With the written consent of the donor, ~~the governing board~~ **an institution** may **modify or** release, in whole or in part, a restriction ~~imposed by the applicable~~ **in a** gift instrument on the ~~use or~~ **management,** investment, **or**

purpose of an institutional fund.

(b) A release under this section may not allow an institutional fund to be used for purposes other than the **charitable** purposes of the institution affected.

~~(c) This section does not limit the application of the doctrine of cy pres or the ability of the governing body through legal or equitable proceedings to obtain a release of a restriction in an applicable gift instrument.~~

(c) An institution may petition a court to modify, in a manner consistent with the donor's intentions, a restriction in a gift instrument concerning the management or investment of an institutional fund if the restriction:

(1) is impracticable or wasteful;

(2) impairs the management of investment fund; or

(3) due to unanticipated circumstances, the modification will further the purposes of the institutional fund.

An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(d) An institution may petition a court to modify, in a manner consistent with the gift instrument, the charitable purpose of a fund or a restriction on the use of a fund if the charitable purpose or use becomes unlawful, impracticable, impossible, or wasteful. An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(e) If an institution determines that a restriction in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible, or wasteful, the institution shall notify the attorney general. Not more than sixty (60) days after providing notice under this subsection, the institution may release or modify all or part of the restriction if:

(1) the value of the institutional fund subject to the restriction is less than twenty-five thousand dollars ($25,000);

(2) the institutional fund was established more than twenty (20) years earlier; or

(3) the institution uses the institutional fund in a manner consistent with the charitable purposes expressed in the gift instrument.

SECTION 11. IC 30-2-12-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2007]: **Sec. 14. (a) An institution that manages or invests an institutional fund shall consider the following:**

(1) The intent of a donor expressed in a gift instrument.

(2) The charitable purposes of the institution.

(3) The purposes of the institutional fund.

(b) A person who is responsible for managing or investing an institutional fund shall:

(1) comply with the duty of loyalty imposed by any law; and

(2) manage or invest the fund in good faith and with the care a prudent person acting in a like position would use under similar circumstances.

(c) An institution that manages or invests an institutional fund:

(1) may only incur costs that are appropriate and reasonable in relation to:

(A) the assets of;

(B) the purposes of; and

(C) the skills available to;

the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two (2) or more institutional funds for purposes of management or investment.

(e) Subject to the terms of a gift instrument, an institution or person shall do the following:

(1) An institution that manages or invests an institutional fund shall considered the following factors:

(A) General economic conditions.

(B) The possible effects of inflation or deflation.

(C) The possible tax consequences of investment decisions or strategies.

(D) The role of each investment or course of action in relation to the overall investment portfolio of the institutional fund.

(E) The expected total return from income and the appreciation of investments.

(F) Other resources of the institution.

(G) The needs of the institution and institutional fund to make distributions and to preserve capital.

(H) The relationship or value of an asset to the charitable purposes of the institution.

(2) An institution shall make management and investment

decisions about an individual asset:

(A) in the context of an institutional fund's portfolio of investments; and

(B) as part of an overall investment strategy that has risk and return objectives reasonably suited to the institutional fund and to the institution.

(3) Except as otherwise provided in law, an institution may invest in any kind of property or type of investment.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, due to special circumstances, the purposes of the institutional fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall:

(A) retain or dispose of the property; or

(B) otherwise rebalance the investment portfolio;

to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution.

(6) A person that has, or represents to have, special skills or expertise shall use the skills or expertise to manage or invest institutional funds.

SECTION 12. IC 30-2-12-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15. (a) Subject to the terms of a gift instrument and except as provided in any other law, an institution may delegate to an agent the management or investment of an institutional fund. The institution shall act in good faith and with the care a prudent person acting in a like position would use under similar circumstances in doing the following:**

(1) Selecting an agent.

(2) Establishing the scope and terms of the delegation, subject to the purposes of the institution and the institutional fund.

(3) Periodically reviewing the agent's actions to monitor the agent's performance of and compliance with the scope and terms of the delegation.

An institution that complies with this subsection is not liable for the decisions or actions of an agent to whom the management or investment of an institutional fund is delegated.

(b) An agent shall exercise reasonable care to perform a delegated function in compliance with the scope and terms of the delegation.

(c) An agent that accepts the delegation of a management or investment function from an institution submits to the jurisdiction of Indiana courts in all proceedings concerning the delegation or the performance of a delegated function.

(d) An institution may delegate management or investment functions to its committees, officers, or employees as otherwise provided by law.

SECTION 13. IC 30-2-12-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16. Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.**

SECTION 14. IC 30-2-12-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 17. (a) Except as provided in subsection (b), this chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.**

(b) This chapter does not:

(1) modify, limit, or supersede 15 U.S.C. 7001(a); or

(2) authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).

SECTION 15. IC 30-2-12-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: IC 30-2-12-1.5; IC 30-2-12-4; IC 30-2-12-7; IC 30-2-12-8; IC 30-2-12-10; IC 30-2-12-11; IC 30-2-12-12.